Petition for Writ of Habeas Corpus in California Supreme Court case number S039285 (Exhibits excluded) filed on April 13, 1994

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re STANLEY WILLIAMS,
Defendant and Appellant,
On Habeas Corpus.

S039282

PETITION FOR WRIT OF HABEAS CORPUS

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TO: THE HONORABLE MALCOLM M. LUCAS, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioner, Stanley Williams, through his attorney Bert H. Deixler, petitions this Court for a writ of habeas corpus and by this verified petition sets forth the following facts and causes for the issuance of the writ:

I.

Petitioner is unlawfully imprisoned under a judgment of conviction and sentence of death at the California State Prison at San Quentin, Tamal, California, by Arthur Calderon, Warden an James Gomez, Director of the California Department of Corrections. Such judgment was imposed by the Los Angeles Superior Court in case number A194636 on April 15, 1981.

II.

On March 13, 1981, a jury found petitioner guilty of four counts of first degree murder with special circumstances and two counts of robbery. On March 18, 1981, after neither side presented further evidence, the jury returned a verdict of death. Petitioner's jury was selected from a pool drawn exclusively from the voter registration list. The prosecutor used peremptory challenges against the only two African-American females seated as potential jurors and used an additional peremptory challenge to remove an African-American male as a potential alternate juror.

III.

Petitioner's automatic appeal followed imposition of the judgment of death. In conjunction with the appeal, counsel filed a petition for writ of habeas corpus, challenging petitioner's conviction as illegally obtained in violation of the Sixth and Fourteenth Amendments in that trial counsel inadequately failed to move to suppress the testimony of an important prosecution witness pursuant to United States v. Henry (1980) 447 U.S. 264 and United States v. Massiah (1964) 377 U.S. 201. On April 11, 1988, the Court affirmed petitioner's conviction and, following an evidentiary hearing, denied him habeas corpus relief. (Peopl v. Williams (1988) 44 Cal.3d 1127.)

IV.

Petition filed a timely petition for a writ of certiorari which was denied by the United States Supreme Court on

November 28, 1988. Thereafter the state set January 27, 1989 as the date on which petitioner was to be executed.

V.

On January 6, 1989, under the compulsion of the pending execution date, counsel for petitioner sought a stay of execution and filed a petition for writ of habeas corpus in this Court, which answered issues raised by this Court's opinion on direct appeal and raised issues based on facts which were discovered as a result of the fall, 1988, publicity concerning the use of informants in the Los Angeles County jail. This Court denied that petition on the merits, less than two weeks after its filing, by minute order dated January 18, 1989, without receipt or request for an informal response from the state, and the issuance of an order to show cause, or the grant of an evidentiary hearing. The Court denied the stay of execution.

VI.

On January 18, 1989, counsel for petitioner sought a stay of execution from the United States District Court for the Central District of California and filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. On January 23, 1989, petitioner's case was assigned to Judge Fernandez, who, by order dated January 24, stayed petitioner's January 27 execution date.

VII.

On July 31, 1989, the federal district court stayed federal habeas corpus proceedings and ordered petitioner back to state court to file a state habeas corpus petition on issues relating

to the testimony and use of the jailhouse informant in petitioner's case.

VIII.

On September 1, 1989, counsel for petitioner filed a petition in this Court raising those issues. On February 28, 1990, the Court ordered the state to show cause "why petitioner's sentence of death is not invalid because it is based on evidence that may have been obtained in violation of rules established in Massiah v. United States (1964) 377 U.S. 201, and United States v. Henry (1980) 447 U.S. 264." (In re Stanley Williams, Case No. S011868.) An evidentiary hearing was held in May, 1992, and post-hearing briefing was completed in March, 1993. The matter was orally argued on February 15, 1994. This cause is still pending before this Court.

IX.

This petition is necessary because petitioner has no other plain, speedy or adequate remedy at law for the substantial violations of his constitutional rights described below in that his conviction is final and the facts set forth below were not part of the record on appeal. Consequently, these issues could not have been raised on direct appeal.

X.

As the procedural history set forth in the preceding paragraphs demonstrates, petitioner has previously sought writ relief from his conviction and death sentence on three occasions Two of those petitions raised Henry - Massiah issues and resulte in the issuance of orders to show cause. The other petition

raised issues of trial counsel's inadequacy in failing to investigate and present mitigating evidence and failing to investigate mens rea evidence. The investigation which produced the issues set forth herein was undertaken after petitioner's return from federal court and in light of McCleskey v. Zant (1991) 499 U.S. 467. Although the scope of the duty to investigate claims in state court is unclear, it is apparently less exacting than that imposed in federal court. (Contrast McCleskey v. Zant, supra, with In re Clark (1993) 5 Cal.4th 750, 775-778, 783-787) Nonetheless, the federal jurisprudence concerning factual and legal exhaustion, and the clear message from McCleskey, that all potential factual and legal issues should be presented in a single federal petition, merit the filing of the present petition. Although some of these issues have been previously presented, counsel sets forth those facts which have been discovered for the first time during the time this case has been on return to state court from the federal district court, during the pendency of the current cause of action.

The duties imposed upon counsel for one condemned to death have changed dramatically since 1981, when current counsel was first appointed by this Court, and since petitioner's automatic appeal concluded and his conviction and death sentence became final in late 1988, and since the pending habeas corpus action was initiated in 1989-1990. Counsel has endeavored to meet what he perceives as his duties to his client under the evolving federal and state rules by the filing of this petition.

Petitioner is unschooled in the law and has at all times relied on current counsel to ascertain relevant facts, to know the prevailing law, and to evaluate the bona fides of legal claims. In addition, as set forth below, petitioner's neuro-cognitive deficits and his serious organic disorder rendered him particularly unable to appreciate legal consequences of factual information or to factually investigate his own case. If the Court believes that these matters should have been presented earlier, then the fault lies with counsel's performance, rather than petitioner, who has relied on counsel since his appointment in 1981 to vigorously and competently litigate petitioner's case.

Each one of the substantial constitutional violations presented herein resulted in a fundamental miscarriage of justice which cannot be deemed irremediable. As this petition and the accompanying exhibits demonstrate, had the information set forth below been presented at trial, no reasonable jury would have found petitioner guilty of first degree capital murder or impose the death penalty. In particular, the evidence proffered herein shows that the sentencing jury had a grossly misleading profile of petitioner before it when it voted for death. The state hid (and continues to hide) evidence of its wrongdoing which resulted in a fundamentally unfair proceeding. Racial animus infected petitioner's trial and created a fundamental miscarriage of justice. The shackling and extra security measures employed at petitioner's trial substantially infringed upon the presumption of innocence and petitioner's mental incompetence at the time of trial rendered the proceedings void.

XI.

Petitioner incorporates all exhibits appended to this petition as if fully set forth herein. Petitioner requests that the Court take judicial notice of the certified record on automatic appeal, the briefing on appeal, and the documents and proceedings generated in connection with the prior writ petitions filed in this Court by counsel on behalf of petitioner in order to avoid duplication of those voluminous materials.

XII.

Although petitioner has no access to discovery or this Court's subpoena power, and because no evidentiary hearing has occurred on these issues, the full evidence in support of the claims may not presently be obtainable. Nonetheless, the evidence set out below adequately supports each claim and justifies issuance of an order to show cause.

XIII.

Petitioner's conviction, sentence, and confinement are unlawful and violate his Sixth, Eighth, and Fourteenth Amendment rights to a fair trial, to be mentally present, to the effective assistance of counsel, the presumption of innocence, a reliable guilt and penalty verdict, and due process in that he was subjected to excessive security and shackling without permissibl justification and necessity and in the absence of a hearing thereon.

The facts and law supporting this claim, among others to b presented after discovery, and access to this Court's subpoena power are as follows:

1. This Court has long held that a defendant cannot be subjected to physical restraints of any kind in the courtroom while in the jury's presence, unless there is a showing of a manifest need for such restraints. (People v. Duran (1976) 16 Cal.3d 282, 290-291 reaffirming People v. Harrington (1871) 42 Cal 165.) Consequently, absent a record showing of violence or the threat of violence or other nonconforming conduct, impositior of physical restraints constitutes an abuse of discretion. (People v. Duran, supra, 16 Cal.3d at 291.)

Shackling is strongly disfavored because of the danger that it may deprive the defendant of the presumption of innocence. (Hamilton v. Vasquez (9th Cir. 1989) 882 F.2d 1469, 1471.) It may also "impair the defendant's mental faculties," "impede the communication between the defendant and his lawyer," "detract from the dignity and decorum of the judicial proceedings," and "may be painful to the defendant." (Spain v. Rushen (9th Cir. 1989) 883 F.2d 712, 721, citing prior case law.) Because of these constitutional problems, due process requires that trial judges pursue less restrictive alternatives before imposing physical restraints. (Ibid.) All of these principles were violated and all of these constitutional problems arose in petitioner's case.

Similarly, excessive security deprives a defendant of due process by creating the impression that the defendant is dangerous or untrustworthy. (Holbrook v. Flynn (1986) 475 U.S. 560, 569.)

Together, the shackling and security seriously and prejudicially skewed both the guilt and penalty assessments in the state's favor.

2. Petitioner's hands were shackled during the trial. (Decls. of Ceola Williams and Juror Kellick, appended.)

3. The restraining shackles were visible to both jurors and spectators in the courtroom. (Ibid.)

4. In addition to the shackling, unusual security measures -- the obvious presence of more than the usual number of deputy sheriffs -- were employed during petitioner's trial. (Decl. of Alternate Juror Wiseman.)

5. Neither the shackling nor the additional security was reasonably necessary nor was it justified in an appropriate hearing at which petitioner was present.

6. Had such a hearing been held, it would have been readily apparent that petitioner represented no threat to the security of the courtroom: indeed he was described by those in the courtroom as a childlike, passive, dazed, confused and scared zombie, rather than as someone who had to be restrained. He was a compliant client, who was reactive rather than assertive and never posed any problems to trial counsel. (Decls. of Ceola Williams, Alternate Juror Wiseman, Donald Archie, Joseph Ingber, Esq.)[1]

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[1] If the court believes that the primary responsibility for raising the matter rested with counsel, then counsel's inaction rendered his representation of petitioner in this regard constitutionally and prejudicially inadequate.

XIV.

Petitioner's conviction, sentence, and confinement are unlawful and were obtained in violation of the Sixth, Eighth, and Fourteenth Amendment rights to a fair, impartial and representative jury, to a fair trial, to a reliable guilt and penalty assessment free of constitutionally impermissible considerations, and to the equal protection of the law because his prosecution -- from beginning to end -- was marred by improper racially-motivated tactics and actions by the state's attorney. Specifically, the trial began with the prosecutor's use of peremptory challenges to remove all African-American women from the jury and again against an African-American male potential alternate jury and ended with his thinly-veiled appeal to racial prejudice during the penalty phase of trial.

The facts supporting this claim, among others to be developed at an evidentiary hearing, and the applicable law are as follows:

1. "[T]he courts of this state cannot tolerate the abuse of peremptory challenges to strip from a jury, solely because of a presumed 'group bias,' all or most members of an identifiable group of citizens distinguished on racial, religious, ethnic or similar grounds. Such an abuse. . .violates the defendant's right to trial by a jury drawn from a representative cross-section of the community under article I, section 16 of the California Constitution." (People v. Turner (1986) 42 Cal.3d 711, 715-716.) Similarly the United States Supreme Court has "denounced the same pernicious practice as a violation of the

federal equal protection clause," (Id. at 716), holding that the federal constitution forbids challenges on account of race or "or the assumption that black jurors as a group will be unable to impartially consider the State's case against a black defendant." (Batson v. United States (1986) 476 U.S. 79, 89). As noted in Batson, "[r]acial discrimination in the selection of jurors harms not only the accused whose life or liberty they are summoned to try:" The harm that flows "from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community." (Id. at 87).

2. The federal constitution prohibits racially biased prosecutorial arguments, the exercise of prosecutorial discretion on the basis of race, and the jury's consideration of race qua race as an aggravating factor in the selection of an appropriate punishment. (McCleskey v. Kemp (1987) 481 U.S. 279, 309-310, n. 30; Kelly v. Stone (9th Cir. 1975) 514 F.2d 18, 19; Zant v. Stephens (1983) 462 U.S. 862, 885.) Because "racial and other forms of discrimination still remain a fact of life, in the administration of justice as in our society as a whole," (Vasque v. Hillery (1986) 474 U.S. 254, 264 quoting prior case law), the United States Supreme Court has "engaged in 'unceasing efforts' to eradicate racial prejudice from our criminal justice system." (McCleskey v. Kemp, supra, 481 U.S. at 309 quoting prior case law.) In a capital case, "[b]ecause of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected." (Turner v. Murray (1986) 476 U.S. 28, 35.)

3. Petitioner is an African American male. Three of the victims in the charged homicides were Asian and one was Caucasian.

4. The prosecutor used two of his nineteen peremptory challenges to remove the only two African-American females to be seated as prospective jurors. These were prospective jurors Hayes and Johnson. (See Decl. of Joseph Ingber, Esq., appended.) He used one of three peremptory challenges to remove William Coleman, an African-American male, from potential jury service as an alternate juror in petitioner's case.

5. Although the full extent of the prosecutor's use of peremptory challenges in other cases to remove minority jurors on the basis of their race or ethnicity is not known, this Court has twice found petitioner's prosecutor's exercise of peremptory challenges to violate the race-neutral requirements of the law. (See People v. Turner (1986) 42 Cal.3d 711 [prosecutor exercised three peremptory challenges against three African-American prospective jurors in 1980 trial]; People v. Fuentes (1991) 54 Cal.3d 707 [prosecutor exercised 10 of 13 peremptory challenges against African-American prospective jurors and then 4 of 6 peremptory challenges against African-American prospective alternate jurors].)

6. Neither side presented any evidence at the penalty phase of petitioner's trial. At the conclusion of his closing argument at the penalty phase the prosecutor told the jury:

> I'm going to close with an analogy. As I say, an analogy sometimes takes up from the familiar to the unfamiliar. And if we were to take a friend, a wife, a visitor from out

> of town down to San Diego and perhaps go to Mission Bay and perhaps go to the zoo; and if we went to the zoo, we might pass a place that had a high fence and a moat; and in the background you would see, sleepily, really, striped animals, mother, father, maybe some cubs sunning themselves in the shade while we stood there perhaps eating a candy bar or something, looking at them. And there's a little brass plate, and it says, "Bengal Tiger." And you tell your friends or your children that that's a Bengal Tiger, when, as a matter of fact, it is not a Bengal Tiger.
>
> Why do I say that? The same reason that all during this trial you have seen the defendant, Stanley Williams, sitting there in his suit, coming into court each day. We're seeing him in a sanitized atmosphere in a courtroom, the judge with a jury, the spectators, bailiff, defense attorneys prosecutor, all in suits and ties. Very civilized proceeding.
>
> And, so, if you were to take your wife and those same children or a visitor out of town and go to India and there take a trip into the back country, into the hinterlands; and you have a pack on, and you're walking through palm trees and scrub brush; and suddenly you push a large palm aside, and as you do so, you see flashing bright eyes of a mother Bengal Tiger with her cubs. Now, you are seeing a Bengal Tiger.
>
> This is not San Diego Zoo. This is you in the habitat, in the environment. And, by the same token, as we look at the evidence from the 7-11, we look at the evidence from the Brookhaven Motel, that as the defendant -- there's the defendant. There's the defendant in his environment, with his shotgun, killing people unnecessarily for a pittance of money.

7. The prosecutor made a similar argument in People v. Duncan (1991) 53 Cal.3d 955, another capital case in which the defendant was also African-American:

> You have friends come in from out of town. And so one of the things you do with them, you take them to the San Diego Zoo.

> And as you walk along with your friends, these high steel bars and moats, you look back there, there are large striped animals lolling in the sun, looking like kittens. And this little brass plaque up here says, "Bengal Tiger."
>
> And you tell your friends that that's a Bengal Tiger.
>
> Wrong, wrong, wrong. That's a Bengal Tiger in captivity, behind bars, and is being fed so much meat every day.
>
> However, if you and your friends were on a houseboat in Pakistan or India, and the boat comes up to the shoreline in the evening, and you get off the boat, you're walking along; and you push a big palm frond aside, and there you see a huge striped animal with blazing eyes, with cubs, that's a Bengal Tiger. And that's a Bengal Tiger in its natural habitat.
>
> Mr. Cheroske wants to know why you have to cut up the person that we have once know as Eileen DeBaun.
>
> If you were there that night, you wouldn't see the defendant in his suit, the way you have seen him in this trial. You would see him with a butcher knife, out to get money. You would be seeing him in a very natural habitat.
>
> Consequently, the People submit that the evidence in this case shows overwhelmingly that this defendant is responsible for the murder of Eileen DeBaun.

8. The prosecutor's removal of African-American jurors and his closing argument were motivated by intentional racial discrimination, prejudicial, and deprived petitioner of a fair trial by an impartial, constitutionally drawn jury. No reasonable tactical judgment accounted for counsel's omission. (Decl. of Joe Ingber) Trial counsel's failure to challenge the prosecutor's actions rendered his representation of petitioner

inadequate in this regard. (Virgin Islands v. Forte (3rd Cir. 1989) 865 F.2d 59 [failure to make Batson motion rendered counsel's assistance inadequate; People v. Nation (1980) 26 Cal.3d 169, 178-179 [no tactical reason exists for failure to make meritorious motion that would have been adjudicated out of the presence of the jury].)

XV.

Petitioner's conviction, sentence, and confinement are unlawful and were obtained in violation of the Sixth, Eighth, an Fourteenth Amendment rights to a fair trial, a reliable guilt an penalty determination and due process of law by the admission at trial against petitioner of the illegally coerced and involuntar testimony of a key prosecution witness, which resulted in a fund amentally unfair trial. The facts, among others to be developed at an evidentiary hearing, and the law supporting this claim are as follows:

1. A criminal defendant may assert his own due process right to a fair trial where the government seeks or obtains a conviction through the use of evidence obtained by extreme coercion or torture. (United States v. Chiavola (7th Cir. 1984) 744 F.2d 1271, 1273.) Simply put, an involuntary statement may not only be unreliable and excludable on that ground, but may also be inadmissible because its admission is offensive to the administration of justice: "It is unthinkable that a statement obtained by torture or by other conduct belonging only in a police state should be admitted at the government's behest in order to bolster its case." (LaFrance v. Bohlinger (1st Cir.

1974) 499 F.2d 29, 34; accord, United States ex rel Cunningham v. DeRobertis (7th Cir. 1983) 719 F.2d 892, 895-896.)

2. Petitioner and Samuel Coleman were stopped (allegedly for speeding) and arrested by law enforcement while travelling in Mr. Coleman's car in the late hours of March 14, 1979, or early morning hours of March 15, 1979. (Los Angeles County Sheriff's Department Complaint Report, dated 3-15-79.)

3. Samuel Coleman had never previously been arrested. He and petitioner were ordered out of Mr. Coleman's car, thrown spread eagle against the car, and handcuffed. (Decl. of Samuel Coleman.) When Mr. Coleman could not produce identification in the form of a driver's license, he was allegedly told he would be arrested for a vehicle code violation. A search of Mr. Coleman's trunk revealed a properly licensed and registered shotgun. The officers found shotgun shells in the glove compartment. (Los Angeles County Sheriff's Department Complaint Report, dated 3-15-79.)

4. Mr. Coleman and petitioner were arrested and taken to the police station because the patrolling officers allegedly suspected the car was stolen, although Mr. Coleman provided the officers with his name, which matched the officer's follow-up Department of Motor Vehicles check via radio communications. Petitioner was arrested for violations of Penal Code sections 21 and 487.3, purportedly because he knew the shotgun was in the trunk, and because petitioner and Mr. Coleman purportedly gave conflicting statements on how long they knew each other. (Ibid.

5. Upon arrival at the jail, Mr. Coleman was thrown into a cell, beaten, called a nigger and eventually lost consciousness. When he came to, he was laying in a pool of blood. (Decl. of Samuel Coleman.)

6. Mr. Coleman was hurt, scared and moaning in pain. Petitioner tried to calm him. (Ibid.)

7. Some time later, Mr. Coleman was taken to the infirmary for medical treatment. Subsequently, he was taken into an interrogation room, accused of committing murder, and fearing for his life, told the officers what they wanted to hear about petitioner. Mr. Coleman was never advised he had a right to counsel. (Ibid.)

8. Thereafter, prior to Mr. Coleman's making bail on the theft/robbery charges, someone connected to the Office of the District Attorney came to see him and promised him immunity in exchange for his testimony against petitioner. (Ibid.)

9. Fearing further physical abuse, Mr. Coleman agreed to the immunity. When he was released from jail, he learned from his doctor that his ribs had been broken. (Ibid.)

10. Prior to petitioner's trial, but after the preliminary hearing, Mr. Coleman was arrested on an unrelated drug charge an threatened with jail if he decided not to testify. (Ibid.)

11. Mr. Coleman provided the initial interview to the deputies because he had been beaten and feared additional physical harm. His continued cooperation and trial testimony wa the product of the same fear. (Ibid.)

12. Immunity did not alter Mr. Coleman's perception that he faced chronic, continual police harassment on the street if he did not testify in conformity with his earlier coercively obtained testimony. (Ibid.)

13. The physical assault on Mr. Coleman rendered his statement unreliable. The continued fear and threat of harassment ensured that his trial testimony would be the same. His testimony was coerced, unreliable, illegally obtained and admitted in violation of petitioner's fundamental due process right to a fair trial.

14. The admission of Mr. Coleman's testimony was prejudicial. Nearly all of the prosecution's witnesses who had first-hand knowledge of the crime or of alleged admissions by petitioner were presented and known to the jury as accomplices, jail confinees, or career criminals. Samuel Coleman was one of the exceptions. His testimony was used by the state as crucial proof that petitioner committed the Brookhaven Motel crimes and as crucial corroboration for the testimony of criminal James Garrett, who as discussed immediately below, was inadequately impeached as a result of the state's unconstitutional conduct. The only testimony the jury asked to rehear during deliberations was that of Mr. Coleman and of James and Esther Garretts. Plainly, petitioner's liability for capital murder, in the jury's eyes, rested on this testimony.

XVI.

Petitioner's conviction, sentence and confinement are unlawful and were obtained in violation of the Sixth, Eighth, and

Fourteenth Amendments to the United States Constitution and the state constitutional analogues in that the state suppressed material evidence and knowingly permitted false evidence to be admitted and go uncorrected at petitioner's trial, which in turn violated petitioner's rights to confrontation, fair trial, effective assistance of counsel, and present a defense. In addition, the presentation of false evidence, whether or not knowing, in this case violated Penal Code section 1473 and the federal and state constitutions.

The facts, among others to be presented at an evidentiary hearing and after full discovery, and the law which support this claim are as follows:

1. State suppression of material evidence violates the federal and state constitutions. A prosecutor has a duty, even absent a request, to disclose all substantial material evidence favorable to an accused, whether that evidence relates directly to the questions of guilt or punishment or to the credibility of a material witness. (Napue v. Illinois (1959) 360 U.S. 264; Brady v. Maryland (1963) 373 U.S. 83; Giglio v. United States (1972) 405 U.S. 150.) As a necessary correlate, the prosecutor must disclose to the defense and the jury any inducements made t a prosecution witness to testify and must correct any false or misleading testimony by the witness relating to any inducements. (People v. Morris (1988) 46 Cal.3d 1, 29-30; United States v. Young (9th Cir. 1994) ___ F.2d ___ [94 Daily Journal DAR 2681].)

The fact that the government's suppression did not come to light until after petitioner's conviction does not alter the

strength of petitioner's challenge inasmuch as the state has a continuing duty of disclosure which was also breached here and the evidence may alternatively be seen as newly discovered evidence. (People v. Garcia (1993) 17 Cal.App.4th 1169, 1179, 1186.)

2. James Garrett testified at petitioner's trial to a number of alleged admissions by petitioner. He specifically testified that he was not promised and was not expecting any benefits in exchange for his testimony against petitioner. He acknowledged that he expected to receive breaks on other pending cases as a result of his assistance to law enforcement in other matters, not petitioner's capital prosecution.

3. At the time James Garrett reported the alleged admissions by petitioner to law enforcement in March, 1979, he had pending against him a number of criminal charges. He was also under investigation in another matter. On the first matter, he was arrested on March 3, 1978, and subsequently charged with three counts of receiving stolen property (a Mark V Continental, a truck with 245 cases of wine, and 57 handguns) on three separate occasions. (People v. James and Esther Garrett, Los Angeles County Superior Court No. A342090.) In the other matter after Garrett's partner in an insurance fraud scam was mysteriously killed, Garrett was under investigation for extortion and was arrested for the same before petitioner's preliminary hearing in April, 1979. He was charged in June, 197 in a two count information with extortion and compounding a

felony. (People v. James Garrett and Perry L. Hicks, Los Angeles Superior Court No. A344683.)

4. In the first matter, Garrett pled guilty on January 14, 1980, to one count of receiving stolen property. In the second matter, he pled guilty on October 24, 1979, to one count of compounding a felony.

5. Jury selection began in petitioner's case in January, 1981. The jury returned a death verdict on March 18, 1981, and the judge denied petitioner's new trial motion and imposed the judgment of death on April 15, 1981.

6. On May 8, 1981, James Garrett was sentenced to four years probation with no jail time for the criminal conduct resulting in the conviction for compounding a felony. On September 9, 1981, James Garrett was sentenced to four years probation with no jail time for the receiving stolen property conviction. In each case, petitioner is informed and believes that the deputy probation officer recommended a state prison sentence.

7. Judge Gadbois began the September, 1981 sentencing hearing in the receiving stolen property case by announcing that he was "wearing [his] good robe, since we are now disposing of one of the oldest cases in the County of Los Angeles." He rejected the state prison recommendation, because of "a plea bargaining that evolved during the progress of this case that prevents me from doing that, even if I wanted to." The judge then explained that he had a long conversation with prosecutor Robert Martin:

> THE COURT: And that conversation was about a half hour in length, and he described in some considerable detail what you had done. I don't want to repeat it here, because it might even be harmful to you, and I don't want that to happen, so suffice it to say that on the basis of that conversation and the other things that I know about you, I'm very easy about the plea bargain that restricted you to County time in this case, and I then look at it and say, well, what are we going to do for the public if I send you to County Jail for a year.

8. Robert Martin prosecuted petitioner. He was not the deputy district attorney who prosecuted James Garrett on the receiving stolen property matter, nor the deputy attorney genera who prosecuted James Garrett on the matter involving the extortion/compounding a felony charges.

9. At petitioner's trial, James Garrett testified that he was not receiving any benefits for providing statements and testifying against petitioner; that he was promised leniency for his wife Esther in exchange for his assistance on the extortion case and matters leading up to it[2]; and "a chance" as far as his pending cases if he cooperated with them in the insurance fraud investigation.

10. In fact, it is evident that James Garrett received probation in each of his cases at least in part in exchange for his testimony against petitioner. Sentencing in each case occurred years after Garrett's crimes and pleas, but only

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[2] The extortion case grew out of a complicated insurance fraud ring, whereby James Garrett and others staged approximatel 125 freeway accidents and "sold" the accidents to specified doctors and lawyers who represented the victims in their claims to the insurance companies and then returned part of the "take" to Garrett and others.

approximately three weeks (extortion case) and less than five months (receiving stolen property) after petitioner's judgment of death. Petitioner's prosecutor, not the prosecutors involved in either of Garrett's cases, went to bat for Garrett, and the judge in the receiving case acknowledged a bargain and a half-hour conversation with petitioner's prosecutor.

11. At no time during trial did the prosecutor correct James Garrett's trial testimony. He has never done so since. The testimony was materially false and misleading and invaluable impeachment evidence was thereby lost to petitioner.

12. The suppression was prejudicial. By the state's own pretrial admission, made in an internal office memorandum, James Garrett was "the main witness against defendant Williams on the motel murders and testified fully at the preliminary hearing about conversations with Williams as to how the crimes were committed." The state recognized the weaknesses in its case against petitioner for the robbery-homicide of the convenience store clerk, noting in the same memorandum that corroboration of the accomplices was "thin but should prove sufficient." Under these circumstances, the jury's evaluation of the credibility of every witness, but especially James Garrett was crucial. The jury asked to have James Garrett's testimony (along with that of Mrs. Garrett and Mr. Coleman) reread during deliberations. No true evaluation can occur without the full extent of the biases and motivations of the witnesses. Especially in light of the police misconduct in extracting Samuel Coleman's testimony, this additional misconduct cannot be held harmless.

XVII.

Petitioner's conviction and sentence are void, and his confinement is unlawful and was obtained in violation of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution in that he was unable to and did not rationally assist counsel at any time from his arrest through trial and lacked a rational understanding of the courtroom proceedings from the time of his arraignment through trial. Trial of a mentally incompetent person in a capital case violates not only his rights to due process, a fair trial, and a reliable guilt and penalty verdict, but produces violations of a host of trial rights protected by the constitution (to present a defense, to compulsory process, to confrontation, to be present, to the effective assistance of counsel).

In addition, petitioner's procedural due process rights to a hearing should a doubt exist as to mental competence were violated by the attorneys who represented petitioner and the judges before whom petitioner appeared during those times when his behavior and demeanor suggested that he may have been unable to assist counsel rationally or understand the proceedings.

The facts, among others to be developed after full discovery and an evidentiary hearing, and the law which support this claim are:

1. Trial of someone who was in fact incompetent because he was either unable to assist counsel rationally or unable to understand the nature of the proceedings against him, violates his substantive due process rights to be tried while physically

and mentally present. (James v. Singletary (11th Cir. 1992) 957 F.2d 1562; Lokos v. Capps (5th Cir. 1980) 625 F.2d 1258, 1261.) Due process is violated where the defendant's inability to understand, participate and assist stems from a mental disease or defect (ibid.) or from the state's administration of inappropriate, unwanted medication. (Riggins v. Nevada (1992) 504 U.S. ___, 118 L.Ed.2d 479, 490, 494-495.) In addition, when a judge is on notice that questions exist about the defendant's ability to rationally assist counsel and understand the proceedings, he has a duty to inquire into the defendant's competence. (Drope v. Missouri (1975) 420 U.S. 162.) Petitioner was in fact incompetent to stand trial within the meaning of the above-cited cases and due process of law.

Moreover, a separate due process violation occurred because neither the lawyers nor judges who observed petitioner and who should have had a doubt as to mental competence sought or conducted an appropriate inquiry. The judges, particularly the judge at a pretrial proceeding for the appointment of counsel violated Pate v. Robinson (1966) 383 U.S. 375 by not holding a hearing despite being on notice of petitioner's mental absence from the proceedings. Should the court believe the duty to raise the matter rested with petitioner's lawyers at the time of the pre-trial and trial proceedings, then counsel's performance fell below constitutionally acceptable standards. (Agan v. Singletary (11th Cir. 1993) 9 F.3d 900; Bouchillon v. Collins (5th Cir. 1990) 907 F.2d 589; Daniel v. Thigpen (M.D. Ala. 1990) 742 F.Supp. 1535.)

2. Petitioner appeared dazed and out of contact with reality at his arraignment. He giggled throughout the hearing. The woman who had hired a lawyer to represent petitioner at the arraignment tried unsuccessfully to tell the lawyer that petitioner was mentally ill. (Decl. of Rossalyn Blanson.)

3. At the pretrial hearing on May 11, 1979 before Judge Fredricks, petitioner was so unresponsive that the judge asked petitioner's step-father why petitioner would not speak and whether he frequently behaved that way. Petitioner's stepfather explained that ever since petitioner had been using PCP "he really been -- since then he just haven't been on alert. He go into strange moods." The judge opined that petitioner was alert and looking at him but that he "can't say he's understanding what I say." Thereafter petitioner's step-father got petitioner to respond "unh-unh" to the judge's questions.

4. Several people who visited petitioner in jail immediately after his arrest reported that he was confused, bewildered, and did not know why he was in jail or even, at times, where he was. Jackie Watkins graphically described his demeanor as akin to someone who "had a hole in his mind." (Decls. of Jackie Watkins, Donald Archie, Carlos Ricketts, Ceola Williams, Rossalyn Blanson.)

5. He remained in this condition for virtually his whole stay in the county jail. His mother visited him about two to three times a week throughout his jail stay and found him to be so dazed that he did not recognize her or her husband Fred Holiwell. He could not answer simple questions and frequently

lost his train of thought when he was able to talk. (Decl. of Ceola Williams)

6. His behavior was grossly incongruent to his situation. He giggled, was silly, and acted like a child, who was unaware of his surroundings or situation. (Decl. of Bonnie Williams-Taylor.) He had difficulty putting coherent thoughts together and even those who knew him well could barely understand him. (Decl. of Rossalyn Blanson.) He was childish and naive. A fellow inmate was shocked when he read about petitioner's sentencing and discovered for the first time that petitioner had been facing capital charges; his behavior was wholly inconsistent with someone facing the ultimate penalty. (Decl. of Joseph McFarland.) Jail staff made fun of petitioner, bringing him cookies and milk to keep him under control in exchange for which they asked him to flex his muscles for them. (Decls. of Joseph McFarland, Sherry Wiseman.)

7. Petitioner was under psychiatric care and medicated at times during his jail confinement. (Decls. of Donald Archie, Rossalyn Blanson.) Fellow inmate Joseph McFarland found petitioner's behavior on the tier so odd that he described him a eerie. He simply assumed that petitioner's odd behavior was the result of PCP and the effects of chronic use because when petitioner first got to the jail, McFarland could smell PCP when petitioner exercised and perspired. (Decl. of Joseph McFarland.

8. Petitioner's trial demeanor was consistent with his jai behavior. He was largely unresponsive and reminded courtroom

observers of a zombie or someone under the influence of drugs. (Decls. of Ceola Williams, Donald Archie, Sherry Wiseman.)

9. Neuropsychological testing has revealed that petitioner suffered organic brain damage, with the most pronounced deficits in the right temporal and parietal regions and the frontal lobe of the brain. (Decl. of Karen Bronk Froming, Ph.D.) In addition during the several years preceding his arrest through trial, petitioner displayed symptomatology consistent with a serious affective mental disorder marked by long periods of depression and severe manic episodes during the depressive phases. (Decl. of Dr. George Woods, M.D.) Stress substantially exacerbates the effects of petitioner's neurocognitive deficits and his psychiatric illness. These effects include a lack of ability to comprehend new material without repetition, distortion of information imparted to him, the inability to readily and accurately pick up emotional and social cues, lack of concentration on and interest in daily events, loss of contact with reality/psychosis, and severe impairment in comprehending and assessing available options.

10. As a consequence of petitioner's severe depression, alternating with periods of mania, combined with his neurocognitive deficits, he was unable to assist counsel rationally, unable to participate in and make meaningful decisions concernin the proffering or withholding of evidence and defenses in his behalf, and unable to understand the proceedings with the requisite degree of understanding to make him competent to stand trial.

11. Petitioner is further informed and believes that inappropriate medication administered by the state without petitioner's permission and without his knowledge of the nature of the drug contributed to his mental incompetence at the trial.

12. Petitioner hereby incorporates the facts set forth in paragraphs XVIII and XIX and in the exhibits referenced herein.

XVIII.

Petitioner's conviction, sentence, and confinement are unlawful and were obtained in violation of his Sixth, Eighth, and Fourteenth Amendment rights to a reliable and accurate guilt and penalty determination, to present a defense, to a fair trial, and to the effective assistance of counsel in that evidence that petitioner lacked the requisite mens rea for murder and robbery due to his serious mental disorder and/or drug-induced psychosis or intoxication due primarily to the combined effects of his underlying organic affective disorder and the chronic use of powerful mind altering drugs was neither investigated nor presented to the jury.

Counsel's failure to adequately investigate and/or present this evidence in support of diminished capacity and unconsciousness defenses and his failure to enter a plea of not guilt by reason of insanity and investigate and present evidence in support thereof violated the Sixth and Fourteenth Amendments. Had counsel investigated and presented this evidence petitioner would have been found not guilty by reason of insanity or found guilty of lesser offenses. If the Court believes counsel was nc ineffective, habeas corpus relief must nonetheless be granted

because the evidence set forth below undermines the entire prosecution's case and must be considered as newly discovered evidence.

The facts, among others to be presented at an evidentiary hearing after discovery, and the law which support this claim ar as follows:

1. At the time of petitioner's arrest and trial a defendan was considered not guilty by reason of insanity if at the time o the criminal conduct, as a result of mental disease or defect, h lacked the substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. (People v. Drew (1978) 22 Cal.3d 333.) At the time of petitioner's arrest and trial, a criminal defendant could negate the mens rea element of any specific intent crime, as well as the intent to kill, malice aforethought premeditation, and deliberation in a murder prosecution if, as a result of substantially reduced mental capacity -- whether cause by mental illness, mental defect, intoxication or any other caus -- the defendant was unable to or did not form any of the requisite mental states. (People v. Poddar (1974) 10 Cal.3d 75(757-758.) At the time of petitioner's arrest and trial, a criminal defendant could defend against a murder charge by proving that as a result of mental illness, mental disease or mental defect that he was unable to form the requisite mens rea rendering his act the product of an irresistible impulse. (People v. Cantrell (1973) 8 Cal.3d 672. Finally, a criminal defendant could raise a defense of unconsciousness to a murder

charge -- whether the unconsciousness was due to voluntary intoxication or drug ingestion (partial defense) or due to involuntary ingestion of intoxicants and/or mental illness (complete defense) -- at the time of petitioner's arrest and trial. (People v. Graham (1969) 71 Cal.2d 303, 316.)

The unreasonable failure of counsel to investigate and present a defense based on mental disorders, defects or illnesses and drug or alcohol intoxication constitutes a violation of the constitutional right to the effective assistance of counsel and requires that the conviction be set aside. (People v. Mozingo (1983) 34 Cal.3d 926, 933-934; Bouchillon v. Collins, supra, 907 F.2d 589; Hooper v. Garraghty (4th Cir. 1988) 845 F.2d 471, 473-475; Profitt v. Waldron (5th Cir. 1987) 831 F.2d 1245.)

In petitioner's case, each one of these defenses should have been, but was not explored and presented. The failure to do so prejudicially violated petitioner's constitutional rights.

2. As a result of neurocognitive deficits and organic brain injury, a severe mood disorder or illness, and chronic substance abuse, petitioner lacked the substantial capacity to conform his conduct to the requirements of the law and lacked the requisite mens rea for the crimes charged.

3. Neuropsychological testing revealed that petitioner suffered damage to several areas of the brain which control a variety of cognitive processes and behaviors relevant to his culpability. His family and medical history suggests that the brain damage may have been acquired, i.e., the cumulative product of a number of head injuries and petitioner's intense inhalation

of glue and other toxic solvents as a teenager, and exacerbated an underlying mental disorder.

4. The Halstead Reitan neuropsychological battery revealed petitioner suffered mild generalized organic brain damage. That battery of testing does not, however, reveal the full measure of brain dysfunction and additional tests revealed that petitioner suffered right hemisphere (most likely right parietal and temporal lobe) damage and frontal lobe damage, with serious orbitofrontal dysfunction. The testing also showed clear indications of demyelinization or damage to the tissue which covers the brain's neurons, aids in neural transmission, and connects various regions of the brain.

5. The right hemisphere processes nonverbal contextual, social and emotional cues. Damage to this area renders a person unable to perceive his environment accurately, or to distinguish accurately among threatening and non-threatening factors in the environment. Everything is potentially threatening, especially in less structured daily setting. The nature of this brain damage causes petitioner to experience impaired attention and concentration during periods of depression and causes him to disinhibit or be unable to control his behavior under stress or during manic periods. Under stress or the influence of drugs, o in an unstructured situation, he is likely, because of this damage, to act impulsively.

6. The frontal lobe area is often seen as the "gas and brake" pedal of the brain. It is responsible for planning, organization, reflection, deliberation, abstract thinking,

foreseeing and understanding consequences of one's actions and regulating behavior. The orbitofrontal area connects the frontal lobes and limbic systems. It is responsible for inhibiting behavior. Damage to it results in impulsive behavior. Damage to the frontal lobes impairs petitioner's ability to premeditate, deliberate, form a plan, and conform his conduct to the requirements of the law.

7. The myelin sheath, white matter fibers which connect different lobes of the brain, assist in message transmission. The myelin sheath may be damaged with every head injury as well as by glue and solvent inhalation. Damage to this area means, quite literally, that the neurons "misfire" and messages do not get properly transmitted.

8. Petitioner's brain damage exacerbated an underlying psychiatric illness, characterized by lengthy, severe periods of depression punctuated by alternating depressive and manic periods. Petitioner's depression dated most probably from childhood. Symptoms of depression include agoraphobia, sleep disturbance, anxiety, fearful or brooding behavior, feelings of self-worthlessness, paranoia, distrustfulness and discontinuatic of previously pleasurable activities. Symptoms of mania include irritability, emotional lability, grandiosity, euphoria, and severely impaired judgment. Mania and manic behavior can, as in this case, shift into increasingly psychotic behavior and thinking.

9. Petitioner's friends described numerous instances of manic behavior, including talking and laughing to himself,

purportedly swimming in a pile of dirt, running through the streets without clothes, abruptly stripping off his clothes in the park, picking up a car, crawling through the house in the belief that someone was after him, suddenly frantically spinning around and keeping people away, leaping out of a moving car, and running down the street, clutching his throat and complaining of being unable to breathe. In addition, the nature and extent of petitioner's extreme devotion to and obsession with weight-lifting are consistent with mania.

10. Petitioner's friends and acquaintances also described numerous symptoms of depression, including loss of appetite and loss of interest in weightlifting shortly before the crime, lack of attention to hygiene, wondering aloud what he had done to deserve his fate and why he did not have a job, and an inability or lack of desire to go outside the house.

11. By all reports, petitioner's depression and mania deepened and the manic behavior became floridly psychotic at times in the months and weeks immediately preceding his arrest. Although his psychiatric disorder, alone or in combination with his neurocognitive dysfunction would have been enough to substantially impair his ability to conform and control his conduct and to severely impair his ability to premeditate, deliberate, plan, and understand the consequences of his action, it was further exacerbated and exaggerated by drug abuse.

12. The drugs used by petitioner all produce dissociative states and were powerful mood-altering drugs. PCP can produce a state of mind akin to unconsciousness and cause behavioral